

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

Office of Financial and Insurance Regulation,
Petitioner

v

Cheryl E. Feinberg,
Respondent

Enforcement Case No. 08-5580

For the Petitioner:

Marlon Roberts
Office of Financial & Insurance Regulation
P.O. Box 30220
Lansing, MI 48909-7720

For the Respondent:

Maureen E. Thomas, Attorney
9832 Coledale Court
White Lake, MI 48386

Issued and entered
this 22nd day of September 2008
by Ken Ross
Commissioner

FINAL DECISION

**I
BACKGROUND**

On May 22, 2008, Chief Deputy Commissioner Frances K. Wallace issued an Order Referring Complaint for Hearing and Order to Respond in this case. The Order for Hearing set forth detailed allegations that Respondent Feinberg had erroneously been granted an insurance producer license for which she was not qualified, Respondent having been convicted of a felony before she applied for the license. Hearing in this matter has been scheduled for September 25, 2008.

On August 6, 2008, the Petitioner filed a Motion for Summary Decision. On August 26, 2008, Respondent filed a written response to Petitioner's motion and also filed a Cross Motion for Summary Decision.

II DISCUSSION

The Commissioner has considered the Petitioner's motion, Respondent's arguments in opposition to the motion, and Respondent's cross motion.

The facts necessary to resolving this matter are not in dispute. Respondent Feinberg applied for an insurance producer license in February 2006. The insurance producer license was issued on March 9, 2006. On her application, Respondent disclosed that in 2004 she had been convicted of two felonies: "operating under the influence causing serious injury" and "failure to stop at scene of accident resulting in serious impairment/death."

Section 1205(1), MCL 500.1205(1), provides in pertinent part:

A person applying for a resident insurance producer license shall file with the commissioner the uniform application required by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following:

- (a) Is at least 18 years of age.
- (b) Has not committed any act that is a ground for denial, suspension, or revocation under section 1239.

Section 1239 provides in pertinent part:

- (1) In addition to any other powers under this act, the commissioner may place on probation, suspend, revoke, or refuse to issue an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions for any 1 or more of the following causes:

* * *

- (f) Having been convicted of a felony.

These provisions, read together, prohibit the Commissioner from issuing a producer's license to an individual who has been convicted of a felony. Respondent argues that section

1205 does not apply to revocation action and that, in such cases, section 1239 alone, with its discretionary language, must apply.

The prohibition against licensing individuals with felony convictions is explicitly stated in section 1205(1) of the Michigan Insurance Code, MCL 500.1205(1), and has been the stated policy of this agency since the 2002 revisions of the Insurance Code licensing statute as detailed in the 2004 licensing case, *Mazur v Office of Financial and Insurance Services* (Case No. 03-384-L). Issuing an insurance producer license to an individual with felony convictions constituted an error by the OFIR staff. Given the mandatory language of section 1205(1) requiring license denial, issuing a producer license to Respondent was beyond the agency's authority. When an error in licensing practices is discovered, the remedy is to correct the error. Correction of the error requires revocation of the improperly issued license.

For the reasons cited above, Petitioner's Motion for Summary Decision is granted. Respondent's cross motion is denied.

III ORDER

The hearing scheduled for September 25, 2008 is cancelled.

In accordance with sections 1205(1) of the Michigan Insurance Code, Respondent's insurance producer license is revoked.



Ken Ross
Commissioner